

CONTEMPT

**Presented by
Judge C. Creed McGinley**

**TENNESSEE GENERAL SESSIONS CONFERENCE
February 26, 2013**

CONTEMPT

OBJECTIVES

- A. To define and analyze the source of our contempt powers.
- B. To distinguish between criminal and civil contempt.
- C. To identify limitations on our contempt powers.
- D. To provide judges with basic background and procedural checklists to deal with contempt situations.

CONTEMPT

Introduction

“O! it is excellent
To have a giant’s strength; but it is tyrannous
To use it like a giant.” Shakespeare

A Court must possess the authority to protect itself against those who disregard its dignity and authority.

The contempt power generally is exercised: to maintain order and decorum in court proceedings; to punish for disrespect shown the Court or its orders; to enforce the Court’s writs and orders; and to punish acts which obstruct the administration of justice.

I. HISTORY AND SOURCE OF CONTEMPT POWERS

Several Tennessee cases indicate that the power of Tennessee judges to punish for contempt is entirely statutory. See e.g., *Scott v. State*, 109 Tenn, 390, 71 S.W. 824 (1902). See also *State v Beeler* S.W.3d 511 (2012). Others, however, have held that the contempt power is inherent. *Loy v. Loy*, 32 Tenn. App. 470, 222 S.W.2d 873 (1949).

A. STATUTORY AUTHORITY AND STATUTORY PUNISHMENTS

1. T.C.A. § 29-9-102 (General)

Scope of power. - The power of the several courts to issue attachments, and inflict punishments for contempt of court, shall not be construed to any except the following cases:

- (1) The willful misbehavior of any person in the presence of the court, or so near thereto as obstruct the administration of justice.
- (2) The willful misbehavior of any of the officers of said court, in their official transactions.
- (3) The willful disobedience or resistance of any officer of the said courts, party, juror, witness, or any other person, to any lawful writ, process, order, rule, decree, or command of said courts.
- (4) Abuse of, or unlawful interference with, the process or proceedings of the court.
- (5) Willfully conversing with jurors in relation the merits of the cause in the trial of which they are engaged, or otherwise tampering with them.
- (6) Any other act or omission declared a contempt by law.

2. T.C.A. § 36-5-104 (Domestic)

Failure to comply with child support order - Criminal sanctions. - (a) Any person ordered to provide support and maintenance for a minor child or children, who fails to comply with the order or decree, may, in the discretion of the court, be punished by imprisonment in the county workhouse or county jail for a period not to exceed six (6) months. (b) No arrest warrant shall issue for the violation of any court order of support if such violation occurred during a period of time in which the obligor was incarcerated in any penal institution and was otherwise unable to comply with the order.

3. T.C.A. § 29-9-107 (Profanity)

Profanity in court of record. - Any person who profanely swears or curses in the presence of any court of record commits a Class C misdemeanor.

4. T.C.A. § 29-3-111 (Violation of Anti-Nuisance Injunction)

Penalty for violation. - If any person breaks into or enters, or uses any building or place while closed under a preliminary injunction granted under the provisions of §§ 29-3-101 - 29-3-111, or violates any permanent injunction granted under the provisions of such sections, such person commits a Class C misdemeanor.

5. T.C.A. § 16-1-103 (Contempt)

Contempt. - For the effectual exercise of its powers, every court is vested with power to punish for contempt, as provided for in this Code.

6. T.C.A. § 29-9-103 (Punishment)

Punishment. - (a) The punishment for contempt may be by fine or by imprisonment, or both. (b) Where not otherwise specially provided, the circuit, chancery, and appellate courts are limited to a fine of fifty dollars (\$50.00), and imprisonment not exceeding ten (10) days, and, except as provided in § 29-9-108, all other courts are limited to a fine of ten dollars (\$10.00).

T.C.A. § 16-15-713 (Attachments)

Attachments and contempts - (a) Notwithstanding any provision of the law or private act to the contrary, courts of general sessions have the power to issue attachments and inflict punishments for contempts of court. Such punishments for contempts shall be limited to:
(1) A fine not exceeding fifty dollars (\$50.00) and imprisonment not exceeding ten (10) days if the judge of the general sessions court is licensed to practice law; and
(2) A fine not exceeding fifty dollars (\$50.00) if the judge of the general sessions court is not licensed to practice law.
(b) Courts of general sessions have the power to punish for contempt persons who fail to appear for traffic violations.

7. T.C.A. § 29-9-105 (Damages)

Performance of forbidden act. - If the contempt consists in the performance of a forbidden act, the person may be imprisoned until the act is rectified by placing matters and person in status quo, or by the payment of damages.

8. T.C.A. § 29-9-104 (Omission to perform act)

Omission to perform act. - (a) If the contempt consists in an omission to perform an act which it is yet in the power of the person to perform, he may be imprisoned until he performs it.

9. T.C.A. § 29-9-108 (Municipal Citation)

Failure to appear. - Any person cited for violation of a city, municipal or metropolitan government law or ordinance, who willfully fails to appear in municipal court without just cause may be fined \$ 10.00 and imprisoned for up to five (5) days for each violation (except parking violations).

10. T.C.A. § 36-3-610 (Violation of Order of Protection)

(a) Upon violation of the order of protection or a court-approved consent agreement, the court may hold the defendant in civil or criminal contempt and punish the defendant in accordance with the law. A judge of the general sessions court shall have the same power as a court of record to punish the defendant for contempt when exercising jurisdiction pursuant to this part or when exercising concurrent jurisdiction with a court of record. A judge of the general sessions court who is not a licensed attorney shall appoint an attorney referee to hear charges of criminal contempt.

(b) In addition to the authorized punishments for contempt of court, the judge may assess any person who violates an order of protection or a court-approved consent agreement a civil penalty of fifty dollars (\$50.00). The judge may further order that any support payment made pursuant to an order of protection or a court approved consent agreement be made under an income assignment to the clerk of the court.

B. COURT RULE

1. Tennessee Rules of Criminal Procedure - Rule 42. Criminal Contempt.

(a) **Summary Disposition.** A criminal contempt may be punished summarily if the judge certifies that he saw or heard the conduct constituting the contempt and that it was committed in the actual presence of the court. The order of contempt shall recite the facts and shall be signed by the judge and entered of record.

(b) **Disposition Upon Notice and Hearing.** A criminal contempt except as provided in subdivision (a) of this rule shall be prosecuted on notice. The notice shall state the time and place of hearing, allowing a reasonable time for the preparation of the defense, and shall state the essential facts constituting the criminal contempt charged and described it as such. The notice shall be given orally by the judge in open court in the presence of the defendant or, on application of the district attorney general or of an attorney appointed by the court for that purpose, by an order to show cause or an order of arrest. The defendant is entitled to admission to bail as provided in these rules. If the contempt charged involves disrespect to or criticism of a judge, that judge is disqualified from presiding at the hearing except with the defendant's consent. Upon a verdict of finding of guilt the court shall enter an order fixing the punishment.

2. Tennessee Rules of Civil Procedure P. 45.06

Contempt. - Disobedience or refusal to be sworn or to answer as a witness may be punished as a contempt of the court in which the action is pending.

3. Tennessee Rules of Civil Procedure P. 65.06

Enforcement of Restraining Orders and Injunctions. - Upon a showing by affidavit or other evidence of the breach or threatened breach of a restraining order or injunction, compliance with such order or injunction may be compelled or its disobedience punished as a contempt by a judge of the court in which the action is pending, or if this judge is disqualified, disabled or absent from the county, by a judge of a court having comparable jurisdiction.

4. Tennessee Rules of Juvenile Procedure P. 1(b)

Contempt proceedings shall be conducted pursuant of the proceedings applicable in courts of general jurisdiction.

II. GENERAL REFERENCE MATERIALS ON CONTEMPT

Raybin, Criminal Practice and Procedure § 24.14-15 (1985)

Pivnick, Tennessee Circuit Court Practice § 3-16 (3rd Ed. 1991)

Burch, Trial Handbook For Tennessee Lawyers § 49-54 (1980)

Wright, Federal Practice and Procedure (Criminal) § 701-713 (2nd Ed. 1982)

Feldman, Criminal Offenses and Defenses In Tennessee, p.122-133 (1988)

Garrett, Tennessee Divorce, Alimony and Child Custody § 16-2-4 (1995 Ed.)

III. DIRECT AND INDIRECT CONTEMPT

A. DIRECT CONTEMPT. Acts committed in the presence of the judge and may be punished summarily. State v. Maddux, 571 S.W.2d 819, 821 (Tenn. 1978). Summary contempt is for direct personal misbehavior in the presence of the judge and summary punishment should only be used in exceptional circumstances where instant action is necessary. See Harris v. United States, 382 U.S. 162, 86 S. Ct. 352, 354 (1965). Even where the contempt is direct the court should usually proceed under the separate provisions regarding notice and a hearing. Raybin, supra at § 24.15, p. 157. See also Wilson v. Wilson, 1992 WL 200971 (Court of Appeals August 21, 1992) (contempt conviction reversed as summary conviction impermissible. Notice and a full hearing was required. The charge was perjury).

B. INDIRECT CONTEMPT. Acts not committed in the presence of the judge and may be punished only after notice and a hearing. State v. Maddux, supra at 821. Furthermore, an act not committed in the presence of the court is treated as indirect contempt though the act may be admitted by the offender in open court. Id.

IV. CRIMINAL AND CIVIL CONTEMPT DISTINGUISHED (Depends on the purpose for which the power is exercised)

A. CRIMINAL CONTEMPT - where the primary purpose is: to preserve the Court's authority

and;

to punish for disobedience of its orders.

B. CIVIL CONTEMPT - where the primary purpose is: to provide a remedy for an injured suitor

and;

to coerce compliance with an order.

Judge Koch describes the difference as follows:

Civil contempt is intended to benefit a litigant while criminal contempt is punishment for an offense against the authority of the court. Garrett v. Forest Lawn Memorial Gardens, 588 S.W.2d 309, 315 (Tenn. Ct. App. 1979). Civil contempt is imposed to compel compliance with an order and parties in contempt may purge themselves by compliance. Criminal contempt on the other hand, is punishment for failing to comply with an order, and the contemptuous party cannot be freed by eventual compliance. Shiflet v. State, 217 Tenn. 690, 693, 400 S.W.2d 542, 543 (1966); Crabtree v. Crabtree, 716 S.W.2d 923, 925 (Tenn. Ct. App. 1986).

Ahern v. Ahern, 15 S. W. 3d. 73 (Tenn. 2000); Sherrod v. Wix, 849 S.W.2d 780, 786 n 4 (Tenn. App. 1993). See also Hicks v. Feiock, 485 U.S. 624, 108 S. Ct. 1423 (1988) (good discussion of difference between criminal and civil contempt).

V. LIMITATIONS ON POWER AND RIGHTS OF DEFENDANTS

A. CONSTITUTIONAL RIGHTS AND DUE PROCESS

1. Right to Attorney

See Sevier v. Kenneth Turner, 742 F.2d 262 (6th Cir. 1984) (father was entitled to assistance of counsel during civil contempt proceeding where he faced incarceration) and Mastin v. Fellerhoff, 526 F. Supp. 969 (S.D. Ohio 1981) (practice of domestic relations court of incarcerating indigent persons for contempt without appointing counsel violated due process).

2. Conflict Free Prosecutor

See Wilson v. Wilson, 984 S.W.2d 898 (Tenn. 1998) (no due process violation when a lawyer representing one party in civil proceeding serve as prosecutor in criminal contempt proceeding based upon conduct arising out of the civil proceedings).

But See Young v. U.S. ex rel Vuitton, 481 U.S. 787, 107 S. Ct. 2124 (1987) (finding of contempt was reversed because the prosecutor appointed by the district judge was a lawyer in the collateral civil suit and thus had a conflict of interest).

3. Confrontation

See Guthrie v. Oldham, No. 85-118-III (Tenn. Crim. App. filed May 9, 1985) (contempt conviction reversed because right to confrontation was violated).

4. Notice

The notice must fairly and completely apprise the defendant of the events and conduct constituting the alleged contempt. See United States v. United Mine Workers of America, 330 U.S. 258, 297, 67 S.Ct. 677 (1947) and Storey v. Storey, 835 S.W.2d 593, 599-600 (Tenn. App. 1992).

5. Burden of Proof

(a) Criminal Contempt - beyond a reasonable doubt. See State ex rel Anderson v. Daughery, 137 Tenn. 126, 191 S.W. 974 (1916) and O'Brien v. State ex rel Bibb, 26 Tenn. App. 270, 170 S.W.2d 931 (1943).

(b) Civil Contempt - clear and convincing evidence. See Oriel v. Russell, 278 U.S. 358, 364, 49 S. Ct. 173 (1929). See also Wright, supra at § 705, p. 830 and Pivnick, supra § 3-16, p. 136.

6. Right to remain silent

See Gompers v. Bucks Stove, 221 U.S. 418, 444, 31 S. Ct. 492 (1911) and Kornick v. Kornick, 3 Tenn. Civ. App. 41, 44 (1931).

7. Double Jeopardy

Most courts have previously held that double jeopardy is no bar to conviction for contempt and a criminal conviction for essentially the same act. See Maples v. State, 565 S.W.2d 202, 203 (Tenn. 1978) and State v. Sammons, 656 S.W.2d 862 (Tenn. Crim. App. 1982). However, in United States v. Dixon, _____ U.S. _____, 113 S. Ct. 2849 (1993) the Supreme Court held that a contempt conviction was a bar to a subsequent criminal proceeding unless the two offenses for which the defendant is punished can survive the "same elements" test. See generally Annotation, 26 A.L.R. 4th 950.

Note: Ahern v. Ahern, 15 S. W. 3d 73 (Tenn. 2000), addresses the attachment of jeopardy in the contempt in the contempt proceeding itself.

B. NO RIGHT TO TRIAL BY JURY

Ahern v. Ahern, 15 S.W.3d 73 (Tenn. 2000); Dyke v. Taylor Implement Manufacturing Company, 391 U.S. 216, 88 S. Ct. 1472 (1968), Pass v. State, 181 Tenn. 613, 184 S.W.2d 1, 1944, and Robinson v. Gaines, 725 S.W.2d 692, 694 (Tenn. Crim. App. 1986). There is also no right to a jury trial in a civil contempt proceeding. See Weinstein v. Heimberg, 490 S.W.2d 692 (Tenn. App. 1972).

Caveat - Violation of TCA § 36-5-104 (Failure to pay child support) defined as criminal offense as opposed to contempt, entitling obligor to jury trial. See Brown v. Latham, 914 S.W.2d 887 (Tenn. 1996).

C. RIGHT TO UNBIASED JUDGE

1. See State v. Swisher, 676 S.W.2d 576 (Tenn. Crim. App. 1984) (defendant's contemptuous acts did not involve disrespect to or criticism of the trial judge and therefore, the judge was not required to disqualify himself from hearing the case).

2. See State v. Green, 708 S.W.2d 424 (Tenn. Crim. App. 1986) (three of the contempt charges involved criticism of the judge - he should have recused himself).

D. CONTEMPT AND AN ERRONEOUS ORDER

Principle underlying contempt power is so strong that even erroneous orders must be obeyed at risk of contempt. See Walker v. City of Birmingham, 388 U.S. 307, 87 S. Ct. 1824 (1967); State v Sammons, 656 S.W.2d 862, 869 (Tenn. Crim. App. 1982); and Nucular Fuel v. Local Union, 719 S.W.2d 550, 552 (Tenn. Crim. App. 1986).

VI. DISPOSITION

ABA Standards for Criminal Justice (2d Ed. 1980)

A. STANDARD 6-4.2 ADMONITION AND WARNING

No sanction other than censure should be imposed by the trial judge unless:

- (i) it is clear from the identity of the offender and the character of his or her acts that the disruptive conduct was willfully contemptuous; or
- (ii) the conduct warranting the sanction was preceded by a clear warning that such conduct was impermissible and that specified sanctions might be imposed for its repetition.

B. STANDARD 6-4.3 NOTICE OF INTENT TO USE CONTEMPT POWER: POSTPONEMENT OF ADJUDICATION

(a) The trial judge should, as soon as practicable after he or she is satisfied that courtroom misconduct requires contempt proceedings, inform the alleged offender of the judge's intention to institute such proceedings.

(b) The trial judge should consider the advisability of deferring adjudication of contempt for courtroom misconduct of a defendant, an attorney, or a witness until after the trial, and should defer such a proceeding unless prompt punishment is imperative.

C. STANDARD 6-4.4 NOTICE OF CHARGES AND OPPORTUNITY TO BE HEARD

Before imposing any punishment for criminal contempt the judge should give the offender notice of the charges and at least a summary opportunity to adduce evidence or argument relevant to guilt or punishment.

VII. CONTEMNORS

- A. Attorneys
- B. Jurors
- C. Witnesses
- D. Litigants
- E. Domestic
- F. "Professional" (repeaters who buck system)

VIII. CONTEMPT FOR VIOLATION OF ORDERS

A. REQUIREMENTS:

- (a) knowledge of the order;
- (b) within court's jurisdiction to make; and
- (c) willful violation of order.

See, e.g., State v. Green, 783 S. W. 2d 548 (Tenn. 1990).

B. ORDERS INCLUDED:

Includes all orders, not just final orders. Need not be reduced to writing or entered yet in order for contempt to lie for violation. Error or irregularity in order does not justify failure to obey it.

C. PROBLEM AREAS:

- (a) Findings of contempt required before punishment imposed.
- (b) Orders generally directed to any agency may not put every individual on notice. See Project B.A.S.I.C. v. Kemp, 947 F.2d 11 (1st Cir, 1991).
- (c) Commissioner not always personally required to appear. See Simerly v. Norris, No. 1071 (Tenn. Crim. App., March 26, 1987) (attached).

D. DEFENSES:

- (a) Lack of Jurisdiction: directing that a child be placed in a specific facility; creating adversary situation when there is none.
- (b) Impossibility.
- (c) Anticipatory contempt. Keeley v. Massey, No. 02A01-9307-CH-00159 (Tenn. App., W.S., February 28, 1994).
- (d) Statue of Limitations.

IX. CASES OF SPECIAL INTEREST

A. CRITICISM OF JUDGES

1. Pro se litigant properly in contempt when he referred in pleading to star chamber proceedings, hatchet court, crooked judge and kangaroo trial. See McGraw v. Adcox, 399 S.W.2d 753 (Tenn. 1966).
2. Lawyer cannot be held in contempt for criticism of the judge in newspaper article for being wholly unfit and incapacitated to hold court. Lawyer has constitutional right to express his opinions about a public official. The lawyer did not have a case pending and the comments were not about a particular case. In re Hicky, 149 Tenn. 344, 258 S.W. 417 (1923).
3. Criticism of the administration of the courts by a lawyer would not support a finding of contemptuous conduct. In re Snyder, 472 U.S. 634, 105 S. Ct. 2874 (1985).

B. DEAD BEAT PARENT WHO WON'T WORK

Father was properly held in contempt for failure to pay child support "when evidence showed that, although he was unemployed, he made no effort to obtain employment so that he might make payments." See Boyd v. Boyd, 8 T.A.M. 1-12 (Tenn. App. E.S. 1982). See also State ex rel Moore v. Owens, 15 T.A.M. 11-17 (Tenn. App. M.S. Feb. 7 1990) (even the lack of employment is no defense to the failure to actively seek and accept employment).

C. THE CHICKEN MAN

Contempt conviction reversed because judge failed to inquire into the defendant's religious beliefs where defendants came into court dressed "like a chicken" with fur and other strange attire. See State v. Hodges, 695 S.W.2d 171 (Tenn. 1985).

D. STREET VERNACULAR

Witness at trial who referred to his assailant in a fight as "chicken shit" should not have been held in contempt. He did not disobey court order or in any way interfere with the orderly functioning of the court. See Eaton v. City of Tulsa, 415 U.S. 697, 94 S. Ct. 1228 (1974).

E. CONDUCT OF LAWYER

1. Lawyer constantly interrupts judge and during prosecutors argument assumed a "crucifixion stance" properly held in contempt. See State v. Swisher, 676 S.W.2d 576 (Tenn. Crim. App. 1984).

2. Attorney who refused appointment held in contempt. See State v. Jones, 726 S.W. 2d 515 (Tenn. 1987).

3. Trial court found lawyer in contempt for disrespect and misconduct during trial. Conviction reversed. Attorneys conduct did not go beyond sincere pursuit of necessary vigorous advocacy. See State v. Green, 783 S.W.2d 548 (Tenn. 1990). See also Annotations, 31 A.L.R. 4th 1279 and 68 A.L.R. 3rd 273.

4. Late to Court

(a) Attorney blamed his failure to appear on his secretary. No defense. Conviction affirmed. State v. Richard Donnell, 9 TAM 7-38 (Tenn. Crim. App. Dec. 20, 1983).

(b) Conviction. Reversed. Attorney who was late because of scheduling conflict did not have requisite intent for criminal contempt. In re Edward Witt Chandler, 906 F.2d 248 (6th Cir. 1990).

(c) Lawyer late because his business was destroyed by fire the night before. Judge Neese gave him a \$25.00 fine. See United States v. Anonymous, 215 F. Supp 111 (D.C. Tenn 1963) [Judge Neese was a hard man].

(d) See Annotation 13 A.L.R. 4th 122

5. Court ordered criminal defendant to have no contact with witness. Defense lawyer took defendant to interview witness. Defense lawyer held in contempt. Conviction affirmed. "The conscious act in violation of the known court order is willful." State v. Robert Friedman, No. 89-88-III (Ct. Crim. App. March 8, 1990).

6. Two lawyers fight in hall. Not contempt as not in presence of court or interfering with operation of court. See Edwards v. Jameson, 679 S.W.2d 195 (Ark. 1984). Contra United States v. Patterson, 26 F. 509 (6th Cir. 1886). Contempt to strike lawyer in courtroom even if judge not on bench and the cause of the assault has nothing to do with the proceedings. "It is a rude discourtesy to a court and a grave attack upon the dignity of the authority to which the court belongs, to use its courtroom as a fighting ground."

7. Court order and willful violation. Attorney violates court order but says his violation was careless but not willful. Court of Criminal Appeals says this:

A clear court rule establishing a duty upon an attorney who by his or her position is an officer of the court, cannot be carelessly or recklessly violated without such rule violation possibly constituting contempt. It is not a sufficient defense to say there was no intent to violate the rule.....

We do not deem it a sufficient defense to such a contempt charge to say that the omission was not willful.

In re Zimmerman, No. 85-331-III (Ct. of Crim. App. Aug. 7, 1986).

F. ATTORNEY FEES AND CONTEMPT

Attorney fees awarded in divorce case should be collected as any other judgment and to resort to contempt is normally not proper. See Weinstein v. Heimberg, 490 S.W.2d 692, 696 (Tenn. App. 1972).

G. JURY IN CONTEMPT ! ?

Trial judge directed verdict for defendant and told jury to return a verdict for defendant. The jury reported they could not reach a verdict. "The jury was in contempt of court." See Moore v. Standard Life and Accident, 504 S.W.2d 373, 374-75 (Tenn. App. 1972).

H. ADVICE OF COUNSEL AS A DEFENSE

Advice of counsel is not a defense to a charge of contempt but it should be considered in mitigation of punishment. See Robertson v. Air Draulics

Engineering, 377 S.W.2d 908, 910-12 (Tenn. 1964) and Garrett v. Forest Lawn Memorial Gardens Inc., 588 S.W.2d 309, 315 (Tenn. App. 1979).

I. SHERIFF'S MISTREATMENT OF PRETRIAL DETAINEE

It is contempt for the sheriff to mistreat a pretrial detainee still under the jurisdiction of the court. See In re Birdsong, 39 F. 599 (D.C. Ga. 1889).

J. PERJURY

Perjury is contempt if it has the additional element of obstruction of justice or interference with the processes of the court. See Maples v. State, 565 S.W.2d 202 (Tenn. 1978) [note sec. V A.7 for double jeopardy problem].

K. INTOXICATION IN COURT

See Annotation, Intoxication of Witness or Attorney as Contempt of Court, 46 A.L.R. 4th 238. General rule seems to be that intoxication is contempt if it obstructs the administration of justice or interferes with or disrupts the orderly process of the court.

L. CONTEMPT - AWARDING OF DAMAGES

Products liability case. Trial judge ruled pretrial that proof of a recall not admissible. Plaintiff's

lawyer repeatedly violated the pretrial ruling. Mistrial was declared. Plaintiff lawyer was held in contempt and pursuant to T.C.A. § 29-9-105 all of the defendants cost and expenses incident to the mistrial were appropriately taxed to the plaintiff's attorney. See Green v. General Motors, 1988 WL 3866 (Court of Appeals, January 22, 1988).

M. T-SHIRT

The wearing of a t-shirt containing offensive language doe not fall within any of the provisions of T. C.A. §29-9-102. State v Dana M. King, No. 01C01-9905-CC-00183 (Tenn. Crim. App. Order, May 27, 1999) (attached).

N. DEPOSITION CONDUCT

Party-deponent's use of foul language and insults to attorney at deposition can constitute direct contempt under §29-9-102(i) because deposition is admissible at trial for any purpose. Dargi v. The Terminix International Company, L.P.U., No. M 1999-00145-COA-R3CV (Tenn. App., Nashville, February 1, 2000).

PROCEDURE

DIRECT CONTEMPT - CRIMINAL (RULE 42 (a)) ELEMENTS CHECKLIST

- I. Does the conduct occur in the presence of the judge?
- II. Does the actor know or should the actor know that the conduct in question is impermissible?
- III. Does the actor know the consequences of such continuing conduct?
- IV. Is the conduct willful or intentional?
- V. Is the conduct:
 - A. Obstructive? or
 - B. Disruptive? or
 - C. Interruptive? or
 - D. Derogatory?
- VI. Are immediate punishment and/or restrictive sanctions necessary to maintain order and decorum or to preserve the authority of the judge?

DIRECT CONTEMPT - CRIMINAL DISPOSITION CHECKLIST

1. Take a recess!
2. Make findings on the record for each of the elements of direct criminal contempt beyond a reasonable doubt.
3. Give the actor an opportunity to respond to the findings.
4. Make a finding of guilt.
5. Give the actor an opportunity for allocution.
6. Summarily impose a statutory or reasonable fine not to exceed \$50.00 and/or any sentence of 10 days or less and/or other restrictive sanctions.
7. The order of contempt shall recite the facts and shall be signed by the judge and entered of record.

PROCEDURE

INDIRECT CONTEMPT - CRIMINAL (RULE 42 (b)) ELEMENTS CHECKLIST

- I. Does the conduct occur outside the presence of the judge?
- II. Does the actor know or should he or she know that the conduct in question is impermissible?
- III. Does the actor know the consequences of such continuing conduct?
- IV. Is the conduct willful or intentional?
- V. Is the conduct:
 - A. Obstructive? or
 - B. Disruptive? or
 - C. Interruptive? or
 - D. Derogatory?
- VI. Are immediate punishment and/or restrictive sanctions necessary to maintain order and decorum or to preserve the authority of the judge?

INDIRECT CONTEMPT - CRIMINAL DISPOSITION CHECKLIST

1. Take a recess!
2. Give notice of time and place of hearing allowing reasonable time for preparation of defense and state essential facts constituting criminal contempt charged. (Notice may be oral in open court or by charging instrument.)
3. If charge involves disrespect to or criticism of judge, recusal mandatory.
4. Make finding of guilt beyond a reasonable doubt.
5. Upon finding of guilt by the court, order to be entered fixing punishment of not more than \$50.00 nor more than 10 days in jail.

PROCEDURE

DIRECT CONTEMPT - CIVIL ELEMENTS CHECKLIST

- I. Is the order of the court violated in the presence of the judge?
- II. Does the actor know that the conduct in question was prohibited or directed by the order of the court?
- III. Does the actor know the consequences of such continuing conduct?
- IV. Is the violation willful or intentional? Does the actor have the means or ability to comply?
- V. Is the punishment necessary to compel compliance with the order?

DISPOSITION CHECKLIST DIRECT CIVIL CONTEMPT

1. Take a recess!
2. Make findings on the record for each of the elements of direct civil contempt.
3. Make a finding of guilt.
4. Give the actor a final opportunity to comply with the order and to purge the contempt.
5. Summarily impose any reasonable fine and/or sentence which terminates upon compliance with the order.

PROCEDURE

INDIRECT CONTEMPT - CIVIL ELEMENTS CHECKLIST

- I. Is the order of the court violated outside the presence of the judge?
- II. Does the actor know that the conduct in question was prohibited or directed by the order of the court?
- III. Does the actor know the consequences of such continuing conduct?
- IV. Is the violation willful or intentional? Does the actor have the means or ability to comply?
- V. Is the punishment necessary to compel compliance with the order?

INDIRECT CONTEMPT - CIVIL DISPOSITION CHECKLIST

1. Upon notice of violation of the court's order, notice the actor to appear and to show cause why he or she should not be found in contempt of court.
2. After hearing make findings on the record for each of the elements of indirect civil contempt.
3. Make a finding of guilt.
4. Grant the actor a reasonable time to purge the contempt.
5. Upon a failure to purge, impose any reasonable fine and/or sentence which terminates upon compliance with the order.